

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

| | | |
|-------------------------------|---|----------------------|
| WILLIAM C. BLOOMQUIST, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | Civil No. 03-276-P-S |
| |) | |
| JUSTICE PAMELA ALBEE, et al., |) | |
| |) | |
| Defendants |) | |

**RECOMMENDED DECISION
ON MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS AND
ORDER ON MOTION TO STAY JUDGMENT PENDING DISCOVERY**

In this action William Bloomquist is suing a broad array of defendants in Maine and New Hampshire. Now before the court is a motion by Portland Press Herald, Kennebec Journal Online Central Maine Morning Sentinel, Blethen Newspapers, Inc., David Hench, David Connerty-Marin, Bridgton News Corporation, WGME, Inc., and Pacific and Southern Company d/b/a WCSH-TV, and WMTW Broadcast Group, LLC. (Docket No. 47.)¹ These defendants – all sued for their alleged publication or broadcast of stories relating to Bloomquist's arrest and the seizure of his firearms -- move for judgment on the pleadings on all state claims, the claims against them for invasion of privacy (Counts 39, 40, 50); trespass (Count 41), intentional infliction of emotional

¹ Pegasus Broadcast Television, Inc. d/b/a WPXT, joined in the motion but this action has now been stayed as to this defendant (Docket No. 84) per its filing of a suggestion of bankruptcy (Docket No. 83).

distress (Count 42), negligent infliction of emotional distress (Count 43), and defamation (55, 56, 57 & 58).²

After a thorough review of Bloomquist's allegations against these defendants, I recommend that the Court **GRANT** the defendants' motion for partial judgment on the pleadings as to all these "false light" counts to the extent that they pertain to statements made prior to November 30, 2001.³ I **DENY** Bloomquist's motion to stay judgment on the defendants' motion pending discovery on his trespass count (Docket No. 60) and **GRANT** the defendants' motion for judgment on that count.⁴ I further recommend that the court **GRANT** the defendants' motion as to the allegations pertaining to these defendants relating to events on or after November 30, 2001, because they do not state a claim under applicable state law. I further recommend that even in the absence of a specific motion by these defendants, the three 42 U.S.C. § 1983 counts (Counts 13, 15 & 16) as against these defendants should also be dismissed forthwith because these defendants are not state actors. The defendants have not specifically moved for judgment on the pleadings on these particular portions of the complaint, but I can see no sound reason to prolong this litigation as to media defendants and if Bloomquist's pleading intended to include them within the § 1983 counts, they are entitled to dismissal of those counts as well.

² Defendants list defamation counts 48, 49, 51, 52, 53, and 56 but these counts are lodged against discreetly different defendants.

³ As the defendants suggest, I have placed Bloomquist's trespass claim within these "false light" counts because the trespass injury of which Bloomquist complains is in the nature of an unlawful entry upon his privacy. Bloomquist's assorted responses reinforce this notion. If Bloomquist intends to sue under a theory of statutory or common law physical trespass which would indeed probably have a six year statute of limitations, he will have to make that clear to the court.

⁴ By an order dated August 27, 2004, I denied Bloomquist's motions to amend his amended complaint to add new factual allegations but permitted an amendment to the complaint to rectify a typographical error. (Docket No. 98.) That proposed amendment would not have impacted upon the decision to treat the trespass count as a "false light" allegation. Bloomquist did not object to that order.

Discussion

By way of general background, in his complaint Bloomquist alleges that in November 2001 Bloomquist, a resident of Cumberland County, Maine, became involved in a domestic dispute with his wife. Bloomquist obtained a temporary protection from abuse order against his wife and she obtained one against him.

Bloomquist stored at his residence a large store of firearms and explosives. The Cumberland County Sheriff's Department requested assistance from the Bureau of Alcohol Tobacco and Firearms to serve on Bloomquist his wife's temporary protection from abuse order and to assist her in retrieving her personal belongings from the couple's residence. On November 27, 2001, the Sheriff's Department seized from Bloomquist over 81 firearms and other weaponry.

The following day, November 28, 2001, the Cumberland County Sheriff's Department and Sheriff Mark Dion held a press conference, and issued a four page press release "which was widely quoted in various newspapers, local television, and on the Internet." Dion exhibited Bloomquist's entire arms collection for the media to view, record, and broadcast. Cumberland County District Attorney Stephanie Anderson also made statements to the press. Bloomquist's amended complaint does not specifically allege what either Dion or Anderson said. These media defendants covered the story, by publishing news stories and making broadcasts.

Motion for Judgment on the Pleadings as it Relates to Statute of Limitations and the Claims Predicated on Alleged Libel and Slander

Maine law provides that: "Actions for assault and battery, and for false imprisonment, slander and libel shall be commenced within 2 years after the cause of action accrues." 14 M.R.S.A. § 753.

Bloomquist's defamation counts clearly are governed by this limitation period.

See Tanguay v. Asen, 1998 ME 277, ¶ 7, 722 A.2d 49, 50. So, too, are his invasion of privacy counts, as the First Circuit Court of Appeals explained in Gashgai v. Leibowitz

"The purpose of statutes of limitations is to allow a plaintiff a reasonable time to realize the nature and extent of his injuries and file a lawsuit and, after that time passes, to bar actions and thereby relieve potential defendants of the anxiety of litigation. The appropriate length of statutes of limitations is governed by the kinds of injuries which particular causes of action protect and the speed at which they become apparent to the plaintiff. The injuries which may result from defamation and invasion of privacy are similar in nature and injuries resulting from defamation arise, as a general rule, no faster than those resulting from invasion of privacy. Publications which may give rise to liability under both torts travel through the same media at the same speed. That a particular act may give rise to a cause of action under both torts but that the two statutes of limitations may differ in such cases baffles the court as well as the layman and gives substance to Dickens' observation about the nature of the law."

Perhaps most important, assigning a six-year statute of limitations for "false light" actions would often in the many cases where "false light" and defamation coincide defeat the obvious legislative intent to impose a relatively short period of limitations for the bringing of defamation actions. In the absence of any indications from the Maine courts to the contrary, therefore, we hold that they would apply a two-year statute of limitations to "false light" actions. Accordingly, it is irrelevant whether appellant's federal claim is more analogous to an action alleging defamation or to one charging a "false light" invasion of privacy.

703 F.2d 10, 13 (1st Cir. 1983) (quoting Uhl v. Columbia Broad. Sys., 476 F.Supp. 1134, 1137 (W.D. Pa. 1979)(footnote omitted). With respect to the intentional and negligent infliction of emotional distress claims, they -- based on the same publications and broadcasts-- are so intertwined with the privacy/defamation/false-light claims that they are also governed by the same two-year statute of limitation. See Foretich v. Glamour, 741 F. Supp.247, 251 (D.D.C. 1990) ("[W]here the alleged intentional infliction of

emotional distress arises out of other unlawful conduct, the appropriate limitation period is that of the underlying conduct.").

Bloomquist filed this action on December 1, 2003. Under Maine law the time for filing suit under 14 M.R.S.A. § 753 starts to run separately as to each incident on the day after each publication or broadcast. See Tesseo v. Brown, 712 A.2d 1059, 1060 (Me. 1998) (concluding, in analyzing the 14 M.R.S.A. § 752 six-year period, that Maine Rule of Civil Procedure 6(a) dictates commencing the period the day after the act, event, or default). However, Tesseo also made clear, Bloomquist does not get the cushion of a weekend should the last day for filing suit fall on a holiday or weekend. Id.

I also reject Bloomquist's contention that because he was still in the Cumberland County Jail on November 29, 2001, the two-year period should be tolled. Bloomquist contends that he was under a disability within the meaning of 14 M.R.S.A. § 853 which provides: "If a person entitled to bring any of the actions under sections 752 to 754 ... is a minor, mentally ill, imprisoned or without the limits of the United States when the cause of action accrues, the action may be brought within the times limited herein after the disability is removed." There is no Maine case law on the question of whether this provision would toll the statute of limitation for an individual who is being detained for one day awaiting bond. However, the legal question matters not; Bloomquist was released on bond on November 29, 2001, at 6:00 p.m. (Docket No.74, Attach. 3.)⁵ There is no reason to toll the statute of limitation period for that day.

⁵ The docket indicates that in successfully pursuing his amendment to his complaint to correct a typographical error concerning the time he was in jail Bloomquist himself attached a copy of this bail bond. Therefore, I am confident that drawing on this document is not improper in the context of ruling on a motion for judgment on the pleadings.

Pre-November 30, 2001, Article and Broadcast Related Allegations in Bloomquist's Amended Complaint

The following allegations concerning pre-November 30, 2001, articles and broadcasts appear in Bloomquist's amended complaint:

- On November 29, 2001, Defendant Portland Press Herald ran two separate newspaper articles, one entitled "Arsenal Seized from Baldwin Home" and the other entitled "Abuse Enquiry Leads to Seizure of Weapons Cache." Defendant Portland Press Herald ran articles about Plaintiff over the course of several days with follow-ups weeks later. (Am. Compl. ¶ 54.)
- On November 28, 2001, all local television stations, including Defendants WGME 13, NBC 6, ABC 8, and Fox 51, with blatant disregard for the truth ran numerous televised news stories featuring Plaintiff and Plaintiff's weapon collection over the course of several days and follow-ups weeks later. (*Id.* ¶ 62.)
- On November 29, 2001, Defendant Blethan Newspapers, Defendant Kennebec Journal Online Central Maine Morning Sentinel, and Defendant Jerry Harkavy did publish a defamatory article based on false and fabricated statements with blatant disregard for the truth. This article was calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated to injure and damage Plaintiff's reputation in the community. **Specific falsehoods can be found in Appendix A.** (*Id.* ¶ 64.)
- On November 29, 2001, Defendant Blethan Newspapers, and Defendant Jerry Harkavy did with blatant disregard for the truth publish a defamatory article based on the false and fabricated statements. This article was calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated to injure and damage Plaintiff's reputation in the community. **Specific falsehoods can be found in Appendix A.** (*Id.* ¶ 65.)

Bloomquist's claims pertaining to these articles and broadcasts are untimely.⁶

Trespass Claim and Motion to Stay Judgment Pending Discovery

As to his trespass count against these defendants, Bloomquist is most specific in his allegation that the Portland Press Herald, WGME 13, WMTW 8, WCSH 6, and WPXT FOX 51 "did unlawfully trespass by their unlawful entry upon Plaintiff's property, privacy, and seclusion and did invite other unknown persons who caused damage to Plaintiff's property." (Am. Compl. ¶ 503.) In his response Bloomquist does not

⁶ The tag lines about unspecified follow-ups is not sufficient to make claims related to these articles and broadcasts timely.

contradict the defendants' characterization of this count as being one that is brought as an invasion of privacy/intrusion in seclusion tort. See Zillman, Simmons & Gregory, Maine Tort Law § 13.21 & ¶ 13.22 at 13.42 – 12.45 (1994); see also Loe v. Town of Thomaston, 600 A.2d 1090, 1093 (Me. 1991); Nelson v. Times, 373 A.2d 1221, 1223 (Me. 1977)). Bloomquist nowhere has identified an alternative theory of trespass.

In his responsive pleading, Bloomquist explains that while he was detained on November 29, 2001, he observed from the distance a televised broadcast of his home. (Resp. Opp'n Mot. J. Pleadings at 7.) This broadcast was rendered during the daylight and it was obvious from the footage that one or more of the media defendants had trespassed on his property, removed a flag, and shot video footage, which was then broadcast repeatedly. Bloomquist complains that he has repeatedly attempted to obtain the necessary broadcast data that he needs to plead the necessary who, what, when, and where vis-à-vis the trespass claim.

These defendants are entitled to judgment on the pleadings on this claim as Bloomquist is clearly attempting to state a claim for a trespass that allegedly occurred before November 30, 2001. This claim of trespass is clearly entwined with the broadcasts that resulted and it is not clear to me that Bloomquist can circumvent the statute of limitation on his false light claims simply by introducing a notion of physical intrusion into the mix. Any further discovery on this score would be futile given that the statute of limitation has run.

***Motion to Dismiss for Failure to State Claim
On Amended Complaint Allegations Regarding Articles
Appearing on November 30, 2001, and Later***

The following allegations regarding articles⁷ running on or after November 30, 2001, are referenced in Bloomquist's complaint:

- On November 30, 2001, Defendant Portland Press Herald and Defendant Hench did with total disregard for the truth publish another defamatory article about Plaintiff. This article calculated to injure and damage Plaintiff's reputation in the community. **Specific falsehoods can be found in Appendix A.** (Id. ¶ 66.)
- On December 6, 2001, Defendant Bridgton News Corporation did with blatant disregard for the truth publish a defamatory article based on the false and fabricated statements released by Defendant Sheriff Dion. This article was calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated to injure and damage Plaintiff's reputation in the community. Specific falsehoods can be found in Appendix A. (Id. ¶ 70.)
- On December 7, 2001, Defendant Portland Press Herald, Defendant Blethen Maine Newspapers, Inc. and Defendant David Connerty-Marin did with blatant disregard for the truth publish a defamatory newspaper article based on false and fabricated statements. This article was calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated and intended to injure and damage Plaintiff's reputation in the community. **Specific falsehoods can be found in Appendix A.** (Id. ¶ 71.)
- On or about May 2, 2002 Defendant Bridgton News did with blatant disregard for the truth publish a second defamatory article based on the false and fabricated statements. This article was calculated and intended to defame Plaintiff and contained numerous intentional falsehoods maliciously calculated to continue to injure and damage Plaintiff's reputation in the community. **Specific falsehoods can be found in Appendix A.** (Id. ¶ 118.)

While Bloomquist references Appendix A as providing the "specific falsehoods"

Appendix A dissects four articles published on November 29, 2001. There is no mention of any of these later articles. In his response to the defendants' motion for judgment on the pleadings Bloomquist does not identify specific articles. In regard to the false light claims he states that the false light impression was that he was: a violent person; a threat to the community due to his arsenal; a wife batterer; a stockpiler of military weapons for

⁷ There are no allegations in the amended complaint regarding non-time-barred broadcasts.

nefarious purposes; and not a suitable candidate for the Bar due to his criminal background. (Pl.'s Resp. Opp'n Mot. J. Pleadings at 3.)

One of the defendants' arguments as to all these false light counts against them is that Bloomquist has not stated a false light claim against them for any of these publications or broadcasts. The proper pleading standard for such false light claims is that demanded by Maine law.

The Maine Supreme Court addressed the concern of fair notice to the defendants on slander claims in True v. Plumley:

This general mode of declaring in slander by setting forth the substance of the words spoken, though opposed to the decisions in England and in many of the States, is in conformity with the usual course of practice in Massachusetts as well as in this State. Before the separation, in Nye v. Otis, 8 Mass. 122, it was held that a general count in an action for defamation was good. In Whiting v. Smith, 13 Pick. 364, this mode of declaring received the consideration of the Court, and the previous decision of the Court, in Nye v. Otis, was reëffirmed. In Allen v. Perkins, 17 Pick. 369, the Court held that a general count setting forth that the defendant had charged the plaintiff with a crime, was good. In Clark v. Munsell, 6 Met. 373, it was decided that the Court might, at the instance of the defendant, require a specification of the plaintiff, of the words upon which he intended to rely to support his action. The judicious exercise of this power would seem to remove all fears of any difficulty, which might be anticipated as likely to arise from this general mode of declaring. The defendant might have required the filing by the plaintiff of the particular words by him spoken which imported the charge of adultery, and unless they had been furnished, the defendant would not have been compelled to proceed to trial.

36 Me. 466 (1853). See also Veilleux v. Nat'l Broad. Co., Inc., 8 F.Supp.2d 23, 35 -36 & n.3 (D. Me.1998) (under federal pleading law, allegations of the complaint must afford defendants with sufficient notice of the communications complained of to enable defense, meaning the precise language challenged as defamatory, and plaintiff is limited to its complaint in defining the scope of the alleged defamation).

In view of Bloomquist's rambling 79 page, 631 paragraph complaint I think this is a prime example where it is judicious to exercise the court's power to order Bloomquist to identify the particular statements in these four post-November 30, 2001, articles (and no others, see Phantom Touring, Inc. v. Affiliated Publ'ns, 953 F.2d 724, 728 (1st Cir. 1992); Veilleux, 8 F.Supp.2d at 36) that he deems cast him in a false light under the onerous legal standard that governs such claims.⁸ He has fully responded to the defendants' motion but has made no attempt to identify, as to each defendant, exactly what it is the defendant said that should be subject to his tort theory of liability. While he identifies four specific dates in his complaint, and promises specific falsehoods in his attached appendix, the pleading simply does not deliver a substantive allegation that a defamation/false light defendant could properly address by way of defense.

On 42 U.S.C. § 1983 Counts Against These Defendants

Bloomquist brings three counts against these defendants under 42 U.S.C. § 1983: Count 13 seeks damages under 42 U.S.C. § 1983 for the unlawful interference with Bloomquist's Federal Firearms Dealer License under 18 U.S.C. § 922 and states that all the defendants have conspired in this interference; Count 15 charges a violation of Bloomquist's First Amendment right to travel and assemble and is brought as to all defendants; and Count 16 contends that his Second Amendment right to keep and bear arms was abridged and asserts that every defendant has unlawfully conspired in this regard.

⁸ I recognize that in the already rebuffed portion of Bloomquist's response seeking to amend his complaint that Bloomquist has attempted to add meat to paragraph 66, as well as paragraphs 188, 112, and several of those paragraphs in his appendix that pertain to the pre-November 30, 2001, articles and broadcasts. In his objection to this recommended decision, Bloomquist could readdress the paragraph 66 explication but he should not be permitted to pull into the mix of this litigation any more articles or broadcasts beyond the four alleged occurrences cited above.

It is beyond debate that 42 U.S.C. § 1983 "is aimed at state action and state actors"; "persons victimized by the tortious conduct of private parties must ordinarily explore other avenues of redress." Roche v. John Hancock Mut. Life Ins. Co., 81 F.3d 249, 253 (1st Cir. 1996). I can identify nothing in the whole of Bloomquist's complaint that would except these three counts against these defendants from this general rule and justify letting these counts go ahead against them. See id. at 153-54. Accordingly, I recommend dismissing these counts against these defendants for failure to state a claim. See Apple v. Glenn, 183 F.3d 477, 478 -80 (6th Cir. 1999); Crowley Cutlery Co. v. United States, 849 F.2d 273, 277 -78 (7th Cir. 1988).

Conclusion

For the reasons above, I recommend that the Court **GRANT** the defendants' motion for partial judgment on the pleadings (Docket No. 47) as to all these false light related counts, including the trespass count (Counts 39, 40, 41, 42, 43, 50, 55, 56, 57 & 58) to the extent that they pertain to statements made prior to November 30, 2001. I **DENY** Bloomquist's motion to stay judgment on the defendants' motion pending discovery on his trespass count (Docket No. 60.) I further recommend that these false light counts should also be dismissed as to the November 30, 2001, and later allegations pertaining to these defendants for failure to state a claim with sufficient specificity and the 42 U.S.C. § 1983 counts (Counts 13, 15, 16) against these defendants should also be dismissed because these defendants are not state actors and, therefore, the counts fail to state a claim against them.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions

entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

/s/ Margaret J. Kravchuk
U.S. Magistrate Judge

Dated September 29, 2004

BLOOMQUIST v. ALBEE et al
Assigned to: JUDGE GEORGE Z. SINGAL
Referred to: MAG. JUDGE MARGARET J.
KRAVCHUK
Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 42:1983 Civil Rights Act

Date Filed: 12/01/03
Jury Demand: None
Nature of Suit: 440 Civil Rights:
Other
Jurisdiction: Federal Question

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